IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7335 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

PANCHMAHAL DISTRICT CO-OPERATIVE MILK PRODU.UNION

Versus

DAHYABHAI Z CHAUHAN

Appearance:

MR DIPAK R DAVE for Petitioner

SERVED BY RPAD - (R) for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 29/09/2000

C.A.V. JUDGEMENT

1. The petitioner challenges the order of the Industrial Tribunal, Vadodara in Complaint No.12 of 1999 confirming the injunction granted earlier whereby the petitioner was restrained from changing the conditions of

service of or discharging the respondent-workman. While admitting this petition, the impugned order was stayed by way of ad-interim relief and the same has been extended till now. It is stated on behalf of the petitioner that during the subsistence of the ad-interim relief, the respondent has been dismissed vide order dated 17.8.2000 after giving reasonable opportunity of being heard to the respondent; and that an application for approval of the action, under Section 33 of the Industrial Disputes Act, 1947, is also filed in the Industrial Tribunal by the petitioner.

2. No appearance is filed on behalf of the respondent and today, when the matter was called out for hearing, none was present for the respondent.

3. The petitioner, a cooperative society, placed the respondent under suspension and held a departmental inquiry at the end of which the misconduct alleged against the respondent was held to have been proved. The petitioner, therefore, issued a second show cause notice along with the findings of inquiry and the respondent approached the Industrial Tribunal with the complaint under Section 33-A of the I.D.Act with a prayer for an injunction which was granted and which is under challenge in this petition. It is contended that even as the petitioner had only issued a show cause notice while the respondent was under suspension, there was no question of alteration of conditions of service applicable to the respondent or imposition of any punishment. In short, the complaint under Section 33-A of the I.D.Act filed by the respondent was without any cause of action, incompetent and premature. It was, therefore, submitted that the impugned order of interim relief made in the aforesaid Complaint No.12 of 1999 was required to be set aside. The learned counsel for the petitioner relied upon a judgment of this Court in NADIAD MUNICIPALITY v. GHANSHYAM R. BAROT [1998 (3) GLR 2675] wherein it is held that a complaint under Section 33-A would arise only after a change in service condition has been effected and when it was not the case of the workman that there was already a change or a contravention by the employer, then, the Labour Court/ Industrial Tribunal would have no jurisdiction to entertain an application under Section 33-A of the I.D.Act.

4. In view of the factual developments as noted earlier and the legal position that the respondent had filed an application under Section 33-A of the I.D.Act and obtained an interim relief therein in anticipation but without the basis of any allegation of actual

contravention of the provisions of Section 33 of the I.D.Act, the petition is required to be allowed. The petitioner having already effected the dismissal and filed the approval application, the respondent shall have the opportunity to canvass his case before the same Tribunal. In these circumstances and for the reasons discussed hereinabove, the petition is allowed. The impugned order of the Industrial Tribunal dated 7.1.2000 in Complaint No.12 of 1999 is set aside and accordingly Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela, J.)

KMG Thilake
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